

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD ABDUL TRIMBLE,

Defendant and Appellant.

B212793

(Los Angeles County  
Super. Ct. No. KA079285)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Bruce F. Marrs, Judge. Modified and, as so modified, affirmed.

Alan Stern, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Mary Sanchez and  
Catherine Okawa Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

---

---

Defendant and appellant, Richard Abdul Trimble, appeals the judgment entered following his conviction, by jury trial, for attempted voluntary manslaughter, shooting at an occupied motor vehicle, felon in possession of a firearm, and possessing a short-barreled shotgun, with prior serious felony conviction and firearm enhancements (Pen. Code, §§ 664/192, 246, 12021, 12020, 667, subd. (a), 12022.53).<sup>1</sup> Trimble was sentenced to state prison for a term of 40 years to life.

The judgment is affirmed as modified.

### **BACKGROUND**

Viewed in accordance with the usual rule of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established the following. Because the only issue on appeal concerns sentencing, we offer a brief description of Trimble's offenses.

#### *1. Prosecution evidence.*

On the afternoon of May 26, 2007, Salvador Lopez stopped at a gas station. Defendant Trimble pulled up at the pump Lopez was just about to use. Lopez got angry, but Trimble ignored him, filled up his tank, and left. Lopez filled his tank at another pump and started to drive away. He noticed Trimble was following him. Trimble pulled his truck alongside Lopez's car, pointed a sawed-off shotgun at him, and shot him in the face.

Trimble drove off. When he was spotted by police a few minutes later, Trimble led them on a high speed chase, which ended when he abandoned his truck and fled on foot. He was apprehended shortly thereafter.

Trimble told police the reason for his conduct was that he had recently been under a lot of stress. He also said he thought Lopez might stop his car and get a gun from his trunk, and that was the reason he shot him.

Although Lopez suffered life-threatening injuries, he survived.

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

## *2. Defense evidence.*

Trimble testified that, when Lopez accused him of taking his gas pump, he told Lopez, “Well, the pump I have now is mine, you bastard.” After leaving the gas station, Trimble noticed Lopez’s car. The driver’s side window was rolled down and Lopez was staring at Trimble, looking upset. They exchanged words. Trimble wanted to let Lopez know he was armed, so he grabbed his shotgun from the rear passenger floorboard and gave Lopez a glimpse of it. But instead of acting scared, Lopez continued to be verbally aggressive. Trimble considered this behavior so odd he thought Lopez might have a mental problem.

Lopez put his car into park and started moving around. Trimble thought he might be reaching for a gun under the car seat or trying to pop open his trunk. When Trimble saw Lopez’s arm coming up he pulled the trigger of his shotgun. They were only six to eight feet apart at this point. When he saw Lopez covered in blood, Trimble fled. Trimble testified he had not intended to shoot Lopez; he was pointing the shotgun at Lopez’s car, not at Lopez.

## **CONTENTION**

The trial court improperly imposed two prior serious felony conviction enhancements.

## **DISCUSSION**

Trimble contends the trial court improperly imposed two 5-year prior serious felony conviction enhancements (§ 667, subd. (a)) because the two priors had not been brought and tried separately. The Attorney General properly concedes the trial court erred.

“[T]he requirement in section 667 that the predicate charges must have been ‘brought and tried separately’ demands that the underlying proceedings must have been formally distinct, from filing to adjudication of guilt. Here, as the record plainly reveals, the charges in question were not ‘brought . . . separately,’ but were made in a single complaint.” (*In re Harris* (1989) 49 Cal.3d 131, 136; *People v. Deay* (1987) 194 Cal.App.3d 280, 286 [“Charges brought and tried ‘separately’ for purposes of

section 667 means simply that prior formal proceedings leading to multiple adjudications of guilt must have been totally separate”].) Here, too, the consecutive enhancements were based on aggravated assault convictions that had been brought and tried in a single proceeding.

Trimble’s sentence must be modified to provide for only one section 667 enhancement.

### **DISPOSITION**

The judgment is modified by vacating one of the section 667, subdivision (a), enhancements. The clerk of the superior court is directed to prepare and forward to the Department of Corrections and Rehabilitation an amended abstract of judgment. As modified, the judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.